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## Current Topics.

### Broadcasting—Whether Libel or Slander.

*A propos* of the recent case of *Williams & Norgate, Ltd. v. B. B. C.*, which is believed to be the first slander case to have arisen out of the broadcasting of defamatory matter, it may be of interest to examine what is the essential distinction between slander and libel. Although one of the main distinctions may be said to lie in the fact that, whereas slander is addressed to the ear, libel is addressed to the eye, there appears to be one distinction, as the learned author of "Fraser on Libel" points out, viz., that a defamatory statement communicated by gestures, as, for example, in the language of the deaf and the dumb, would probably be slander, notwithstanding the fact that it is nevertheless addressed to the eye. It is difficult to conceive why any such distinction should be maintained, and the Select Committee appointed in 1843 advocated the abolition of this distinction. Since, however, this distinction still remains with us, it may be appropriate to examine shortly on what it is based. The authorities appear to assign different reasons for the distinction. Probably it is based on the fact that libel is in a more permanent form (e.g., writing, painting, sculpture, etc.), and is therefore likely to do more mischief and more likely to be disseminated than slander. As BOWEN, L.J., said in *Ratcliffe v. Evans*, 1892, 2 Q.B. 530, "a person who publishes defamatory matter in paper or in print puts in circulation that which is more easily transmissible than oral slander." When these words were spoken, however, the learned judge could scarcely have contemplated that in the short course of thirty odd years a process would have been perfected by which a slander uttered by one person might be broadcasted and transmitted and re-transmitted by wireless indefinitely, so that publication might take place in one and the same breath practically to the whole world, if it chose to listen! If, indeed, the distinction between libel and slander truly lies in the fact that the former is more likely to cause mischief than the other, then it might seriously be argued that broadcasting defamatory statements constitutes a libel and not a slander. The time would indeed appear to be now ripe for the abolition of this distinction altogether.

### An Artist's Law.

A PICTURE in this year's Academy represents "A Trial in Camera." On the left, presumably in the dock, is a comely young woman in the usual "cloche" hat. On the right a policeman is, or has been, giving evidence. In the background is seen the bench, on which various gentlemen dressed in plain clothes, are confabulating, so they must be magistrates and not High Court judges. Thus the artist, although no doubt aware that our criminal courts are open, has possessed himself of s. 19 of the Indictable Offences Act, 1848, and the question would appear to resolve itself into one of committal or otherwise. But would he kindly inform a puzzled lawyer as to the nature of the accusation against the young woman which justifies this rare procedure? Had the prisoner been a man, then a very moderate stretch of the imagination would have solved the difficulty. If there had been a child in the witness box, again the suggestion offered might have been accepted. But are we to suppose the policeman is too shy to testify in public? Possibly there has been an illegal operation, and they are trying to coax out of her the name of the actual culprit. But there are well-known means of suppressing a name without a hearing in camera, and it is an unusual course to prosecute the victim, especially in the absence of the actual perpetrator. Or again, she might have kidnapped a child. But then, why in camera? The more the public knew, the greater likelihood of the child being discovered. Incidentally, the young woman looks quite composed, and there is no wardress with her.

Years ago, there was a picture of "Defendant and Counsel"—a fair lady apparently in consultation with three good-looking, but somewhat hatchet-faced, young barristers in wig and gown, all more or less about the same age, and, of course, no solicitor present. One of the barristers was pressing a point in cross-examination against her, the others listening approvingly. Again a legal puzzle—but perhaps all such pictures are in the nature of professional revenge for the farthing damages in *Whistler v. Ruskin*?

### Concubine: Right of Maintenance under Hindu Law.

THE RECENT decision of the Privy Council in *Maugloakar v. Moughibai* (*Times*, 30th ult.), which has a bearing on the

Hindu Law with regard to the right of a concubine to maintenance from her deceased protector's estate should be noted by those who are interested in the study of Hindu Law. The law on the point would appear to be that a Hindu woman who has continuously been kept as a concubine and has lived as a member of her protector's family until his death, is entitled to be maintained, on the death of her protector, out of his estate; this right, however, being conditional on her chastity. In the above case, the real question at issue appears to have been whether or not the concubine was to be regarded as having been a member of the deceased's family, so as to be entitled to maintenance. The facts, which appear strange when viewed in the light of Western ideas, were shortly as follows: The appellant had been the permanent concubine of the deceased for some time. The deceased for some time prior to his death had not been on friendly terms with his own wife, and had left his family house in the occupation of his wife and lawful children, whilst himself had lived and cohabited with the appellant in a house rented in her name. From the evidence, it appeared that the deceased had treated the appellant in every way as his wife, having hired a governess and a motor car for her, and having asked his friends to call on him and the appellant at the latter's house. The appellant, moreover, had nursed the deceased during his last illness. The Privy Council decided that, in the circumstances, the appellant was entitled to maintenance out of her deceased protector's estate, notwithstanding that she had not resided in the family house of the deceased with his wife and family. The point, therefore, which was decided by the Privy Council appears to have been that a concubine may be regarded as being of her protector's family, notwithstanding that she has not resided in the family house of her protector, and is not debarred by that fact alone from maintenance out of her deceased's protector's estate.

#### Rum-running and the Three-Mile Limit.

THE UNITED STATES Circuit Court of Appeals has held that the treaty with Great Britain to extend the right of search of suspected vessels to twelve miles or an hour's steaming from the coast cannot operate to give the revenue authorities powers they did not previously possess. And since the United States, like ourselves (and therein differing from Norway, Sweden, Spain, etc.) adheres in the ordinary course to the doctrine of the three miles limit only, power to seize and search rum-runners flying the British flag is put back as before the treaty. The court left the question open whether Congress had power to implement the treaty in accordance with it, since such a power, if any, had remained unexercised. The decision, in effect, is regarded as a boot-leggers' charter. In the short cabled reports the arguments are not stated, but one would have thought that something might have been made of the point that, after the treaty, every British vessel impliedly submitted to the jurisdiction of the American authorities as enlarged by it. But the distinction must be carefully remembered between the jurisdiction over foreign vessels on the high seas assumed by our own and possibly other Admiralty Courts, administering the general maritime law, and one arising purely out of a local revenue law. The general rule is beyond question that revenue vessels have no power of search over foreign ships beyond their own maritime belt, and a local law purporting to give such power would not be recognized by other nations. Obviously, however, our own Government, in view of the treaty, would not have protested in the present case, and the right declared is that of the private owners. The decision, whether it will be upheld or otherwise, does not reflect much credit on the diplomatists of either nation. The treaty strained the doctrine of the three miles limit, one of great value to us elsewhere, and a bad precedent has been created by a document now held to be valueless. If a British Act of Parliament had been passed, forbidding vessels under our flag to carry liquor cargoes over any reasonable area of the Western Atlantic, save by permit,

and a British officer had been placed in each American revenue boat to give the requisite authority, the jurisdiction to seize would have been beyond question, and no doubt the United States Government would gladly have defrayed the expense of administering such a law. With similar statutes in aid passed in Norway, Sweden, etc., the seas could have been kept clear from smugglers for hundreds of miles from the coast.

#### Partnership or Agency.

In *Thorne v. Wallis*, recently before the Court of Appeal, the plaintiff, a creditor of one H., sought to make the defendant liable for the debts of H. on the ground that the defendant was his partner and was, as such, liable for the debts of the partnership. The defendant had agreed to provide money to meet the preliminary expenses of starting what, owing to its flimsiness, the learned Lord Justices of Appeal preferred to call a venture rather than a business. This agreement was drawn up in the form of a mortgage by H. of the business and the goodwill thereof. It included a covenant by the mortgagor to repay the money advanced on a fixed date, a proviso for redemption, and general provisions designed to safeguard the mortgagee's interests. The mortgagee was not to receive interest, but he was to be repaid the loan and he was to receive half the profits that were made. ACTON, J., came to the conclusion that, in substance, what took place was, that a person with some capital financed a business upon the terms that a person of no capital whatever should manage it for him under the most rigid and strict control of the capitalist's nominee, that that control was maintained throughout from beginning to end, and that the activities of the mortgagor, though ostensibly those of the proprietor of the business, were really the activities of an agent acting for an undisclosed principal or of a partner acting for a partner whose existence as a partner was unknown. Hence, in the learned judge's opinion, the plaintiff should succeed. On appeal the Court of Appeal put a different construction on the facts as to which there was little disagreement. And the decision of the court below was in consequence reversed.

Partnership is defined in the Partnership Act, 1890, s. 1 (1), as "the relation which subsists between persons carrying on a business in common with a view of profit." It thus, as BANKES, L.J., in his judgment pointed out, implies and involves a contractual relationship. Further, s. 1 (3) (d) of the same Act declares that the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the business, does not, of itself, make the lender a partner with the person or persons carrying on the business or liable as such: Provided that the contract is in writing and signed by or on behalf of all the parties thereto." This makes it perfectly clear that an advance by way of loan to a person engaged in business, even if the lender receives a rate of interest varying with the profits, does not make the lender a partner. The principle is applied in *Mollwo, March & Co. v. The Court of Wards*, 1872, L.R. 4, Privy Council Appeals 419, to which BANKES, L.J., referred in his judgment when he expressed his desire to adopt the words of Sir MONTAGUE SMITH (see p. 435), to the effect that "it appears to be now established that although a right to participate in the profits of trade is a strong test of partnership, and that there may be cases where from such perception alone, it may, as a presumption, not of law, but of fact, be inferred; yet that whether that relation does or does not exist must depend on the real intention and contract of the parties." The Court of Appeal, consisting of BANKES, WARRINGTON and ATKIN, L.J.J., were unanimously of the opinion in *Thorne v. Wallis*, that it was the clear intention of the defendant and H. that the defendant should not be regarded as a partner in the venture but merely as a secured creditor. Hence the plaintiff was not entitled to recover against him as agent or partner.

## Averaging of Profits for Purpose of Income Tax.

THE Court of Appeal have delivered an important judgment on the question of the method of determining the average profits of a business commenced before the year of assessment but less than three years before such year: *Betts (H.M. Inspector of Taxes) v. Clare & Heyworth and Clare and Heyworth, Ltd.*, *Times*, 27th ult. The facts in the above case were shortly as follows:—

On the 1st March, 1919, the respondent firm commenced a new business as textile manufacturers, and the first account of this business was made up for the period of ten months, ending on the 31st December, 1919. The profits of the business for this period of ten months amounted to £1,000. On the 1st January, 1920, the respondent firm sold the goodwill and assets of the business to the respondent company. The company decided to make up its accounts to the 31st March of each year. The account thus made by the company for the period of three months, 1st January, 1920, to 31st March, 1920, showed a profit of £12,150, this period being one of great prosperity in the textile industry. The question at issue was how the assessment for the year ending 5th April, 1920, should be ascertained. The respondents contended, on the one hand, that the period of ten months down to the 31st December, 1920, only ought to be taken into consideration and expanded by a simple arithmetical calculation to twelve months, so that the assessable profits would amount to twelve-tenths of £1,000 or £1,200. The Crown, on the other hand, contended that the whole of the profits for the thirteen months, March, 1919, to April, 1920, should form the basis of the assessment, and that the assessment should be on twelve-thirteenths of the profits for that period (£13,150) viz., on £12,138. While Mr. Justice ROWLATT held that the respondents contention was correct, the Court of Appeal by a majority (Lord Justice SCRUTTON dissenting) reversed the decision of Mr. Justice ROWLATT and accepted the contention of the Crown.

Now s. 2 of the Income Tax Act, 1918, is very explicit in its terms and provides that "every assessment and charge to tax shall be made for a year commencing on the 6th day of April and ending on the following 5th day of April," and according to the rule applicable to Case I of Sched. D, "the tax . . . shall be computed on the full amount of the balance of the profits or gains upon a fair and just average of three years ending on that day of the year immediately preceding the year of assessment on which the accounts of the trade have been usually made up, or on the 5th day of April preceding the year of assessment," and according to r. 1 (2) of the rules applicable to Cases I and II of Sched. D, "where the trade, profession, employment or vocation has been set up and commenced within the said period of three years, the computation shall be made on the average of the profits or gains for one year from the period of the first setting up of the business, and where it has been set up and commenced within the year of assessment, the computation shall be made according to the rules applicable to Case VI." In *Bett's Case*, of course, the latter provision would not apply, since the business which was commenced on the 1st March, 1919, had consequently not been commenced within the year of assessment, 6th April, 1919, to 5th April, 1920.

From a consideration of r. 1 (2) of the rule applicable to Cases I and II, it would appear that a different period may have to be considered from the period in a case falling within the rule applicable to Case I. In any event r. 1 (2) is ambiguous and it might well be, as Lord Justice SCRUTTON pointed out in the above case, that a court, when asked to construe that provision might be asked in fact "to legislate to replace an omitted provision rather than to construe the words of the statute." Rule 1 (2) is ambiguous because it is not clear whether the method of computation refers to the period for which the average has to be ascertained, or the period over which the amounts are to be brought into calculation

for the purpose of arriving at the average. In Mr. Justice ROWLATT's opinion, in the court below, "the meaning of the rule was that the period for which the average was required was a year, and that the period over which it was to be taken was from the first setting up of the business to a point not specified. The question . . . was whether it ended before the year of assessment or whether it ran into the year of assessment, and if the latter, whether to the end of the year or to an intermediate point to which accounts happened to be made up," 41 T.L.R., at p. 562. Mr. Justice ROWLATT, however, held the point had been settled for them by the Scottish Courts, and he accordingly followed the decision in *Burntisland Shipbuilding Co., Ltd. v. Weldhen*, 8 Tax Cas. 409. There the appellant company had been incorporated on the 1st April, 1918, though trading did not commence till the middle of May, 1918; the first accounts were made up to the 31st March, 1919, and the second accounts to the 31st March, 1920. The company was assessed to tax for the year 1919-1920, and it was held that the assessment upon the company for the year 1919-1920 should be computed solely by reference to the profits as shown by the accounts for the period to the 31st March, 1919, and not by reference also to the profits for the succeeding year. In other words, the assessment was to be made on the profits for twelve months, proportionate to those for the actual period of trading to the 31st March, 1919, as shown by the first accounts ending on the 31st March, 1919, and without taking into consideration any profits arising in the year of assessment. The court accordingly overruled the assessments made by the District Commissioners, who had taken the profits for the trading period of ten and a half months to the 31st March, 1919, and added thereto one and a half twelfths of the profits of the year ending 31st March, 1920.

In *Betts v. Clare & Heyworth, etc.*, the majority of the Court of Appeal expressed their dissent from the decision in the *Burntisland Case* to the effect that, where the three years' average did not apply, the average was to be taken over the shorter antecedent period to the year of assessment. In Lord Justice BANKES' opinion the *terminus a quo* was expressly laid down by r. 1 (2), *supra*, as being "the first setting up of the business," that being in the case in question the 1st March, 1919. As regards the "*terminus ad quem*," the word "average" in the above rule appeared to indicate, in his lordship's opinion, "a period longer than that for which the assessment was to be made, for all cases had to be determined under that part of the rule which commenced business during the three years preceding the year of assessment, while it could only be shorter if the commencement of the business was just before the year of assessment began. . . . The clause," continued the learned Lord Justice, "could not mean that the period for computation was to be twelve months running from the first setting up of the business. Such an interpretation gave no effect to the word 'average' and selected an arbitrary termination of the year at a moment neither coincident with a balance sheet, with the year of assessment, nor with any anniversary in the business. Such a capricious date was not consonant with the general system of the Act. It was not irrational to take the last date down to which figures for the average were to be taken as the close of the financial year of the business or of the year of assessment." The Court of Appeal accordingly held, as already indicated, that the average was to be estimated from a period beginning with the date of the commencement of the business (1st March, 1919), and ending with the date of the balance sheet in the year of assessment (31st March, 1920). The amount for this period of thirteen months was £13,150, and the average was therefore twelve-thirteenths of this sum, viz., £12,138.

Although there is great force in the argument of the Court of Appeal, the above rule nevertheless is so difficult to construe and its proper construction a matter of such great importance that it is hoped the judgment of the Court of Appeal will eventually be reviewed by the House of Lords.

## What is an Equitable Assignment?

ATTENTION may be drawn to an important judgment of the Privy Council on the question of what may be a good equitable assignment. *Palmer v. Carey*, *Times*, 20th ult. Before dealing, however, with the facts of that case, it may be as well to state briefly the law on the subject. The common law, of course, never recognized the assignment of rights arising from contract, except in certain defined cases founded on custom, e.g., negotiability of bills of exchange; and in order to transfer such rights from one person to another, it was necessary that there should be a novation, which wiped out, as it were, the original contractual rights and substituted new rights in their place. Equity, however, took a different view of the matter and recognized the assignment of contractual rights. If the right assigned was a legal right, equity would enforce the assignment by compelling the assignee to allow the use of his name in a common law action; but if the right was equitable, equity would allow the assignee to sue in his own name in courts in which equitable jurisdiction was exercised. The Judicature Act of 1873, made an important alteration in the law by providing in s. 25 (6) that "Any absolute assignment in writing, under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor . . . shall be and be deemed to have been effectual in law (subject to all equities . . .) to pass and transfer the legal right to such debt or chose in action . . . and all legal and other remedies for the same . . ." This provision, it should be noted, has now been replaced by s. 136 of the L.P.A., 1925, and is repealed by s. 226 of the Judicature Act, 1925 (cf., 6th Sched. of Judicature Act, 1925). The effect of this provision, in cases in which it applied, was to enable the assignee to bring the action in his own name, instead of, as heretofore, compelling the assignee to lend his name to the action. It did not, of course, affect the assignment of equitable choses in action, nor the equitable assignment of legal choses in action, so that an assignment of a legal chose in action which did not comply with the provisions of the Act might still have been a valid equitable assignment thereof, as the House of Lords held in *Brandt v. Dunlop*, 1905, A.C. 454, at pp. 461, *et seq.* There, merchants agreed with a bank that goods sold by them should be paid for by a remittance direct from the purchasers to the bank. The bank having, on the sale of certain goods by the merchants, given the purchasers written notice of the agreement, it was held that there had been a good equitable assignment of the debt with notice to the debtors (i.e., the purchasers).

In *Palmer v. Carey*, *supra*, the facts were shortly as follows: The appellant was the assignee in bankruptcy of one JOHNSTONE. In 1917, JOHNSTONE, who required money for his business, entered into an arrangement with the respondent CAREY, who agreed to advance him money for the purchase of goods to be sold in the latter's business on the terms, *inter alia*, that JOHNSTONE, on selling the goods, for the purchase of which the money had from time to time been lent, was to pay the proceeds to the credit of CAREY's account at the bank, and that CAREY, therefore, after deducting the amount of the loan and one-third of the gross profits arising from the transaction, was to pay the balance to JOHNSTONE; and it was expressly provided that the agreement should not constitute a partnership. Further sums, beyond the amount originally agreed upon, were advanced, and the lender's share of the profits increased to one half. Subsequently the borrowers, on becoming financially embarrassed, entered, on 7th June, 1921, into an agreement with the lender, in consideration of his release of the borrower from repayment of the sums borrowed, to assign to the lender all the stock of his business. In June, 1921, the bankrupt's estate was sequestrated, and the assignment of 1921 declared void, whereupon the question was raised as to whether the 1917 agreement created any charge

upon an equitable interest in the stock-in-trade or the moneys in the hands of the lender. Inasmuch, however, as the money on being borrowed, the goods on being purchased, and the proceeds therefrom on sale, were to belong to the borrower, the court held that there was no equitable assignment, there being no obligation to be found in the contract for the payment of the debt. Nor could the provision with regard to the payment of the proceeds of sale into the lender's bank be regarded as giving the lender "a property by way of security or otherwise in the moneys of the borrower before, or after, he, the lender, had them in his charge."

## A Conveyancer's Diary.

Section 29 (4) of the L.P.A., 1925, enacts that "where at the commencement of this Act, an order made under s. 7 of the S.L.A., 1884, is in force, the person on whom any power is thereby conferred shall, while the order is in force, exercise such power in the names and on behalf of the trustees for sale in like manner as if the power had been delegated to him under this section." In a case heard before Tomlin, J., on the 22nd ult. (*Re Lady Francis Cecil's Settlement Trust*, 1926, W.N.138.

*Re Lady Francis Cecil's Settlement Trust*, 1926, W.N.138.) the point was raised whether or not an order made in 1923 pursuant to s. 7 of the S.L.A., 1882, and enabling a person, T, who was tenant for life in possession of land limited upon trust for sale, to exercise *inter alia* all the powers of a tenant for life conferred by s. 63 of the S.L.A., 1882, was still "in force" within the meaning of s. 29 (4), *supra*, having regard to the provisions of the S.L.A. and L.P.A., 1925. The matter was not free from doubt, for s. 119 (1) (b) of the S.L.A., 1925, only provides that nothing repealed by that Act (which repeal includes, *inter alia*, the whole of the S.L.A., 1882) is to affect "any . . . orders . . . made under any enactment so repealed, but all such . . . orders . . . shall continue in force as if made under the corresponding enactment in this Act." It might be urged that as s. 63 is not reproduced in the new Acts the enactment repealed could not continue in force "as if made under the corresponding enactment of this Act." Tomlin, J. decided and declared that the order of 1923 was still in force and would so continue until further order.

Section 36 (5) of the Ad. of E.A., 1925, provides that a person taking by assent or conveyance of a legal estate from a personal representative may require notice of such assent or conveyance to be endorsed on or annexed to the probate or letters of administration. It is obviously to the interest of the person taking by such assent or conveyance to see that such endorsement or annexation is made, for, by s. 36 (7) *ib.* an assent or conveyance by a personal representative in respect of a legal estate is made sufficient evidence in favour of a purchaser, of such purchaser's right to the legal estate, unless notice of a previous assent or conveyance is so indorsed or annexed. Further, the indorsement or annexation is to be made at the cost of the estate of the deceased, and the probate or letters of administration are to be produced at the like cost to prove that the notice has been placed thereon or annexed thereto.

The net effect of these provisions is to make the probate or letters of administration documents of title to the land to which they relate. Hence, when title is acquired through a personal representative the probate or letters of administration should be included in the acknowledgment of the right of production. The General Conditions of 1925 contain a provision to this effect, namely No. 34 (5). The personal representative may, like a trustee or mortgagee, safely give such acknowledgment, for by s. 64 (2) of the L.P.A., 1925, an

### Probate and Letters of Administration as Documents of Title to Land.

acknowledgment is to bind the individual possessor of the documents as long only as he has possession or control thereof.

Suppose no acknowledgment of the right to production of the probate or administration is given, the question may well arise in practice, what are the rights as to production of a purchaser from the personal representatives in whose custody the documents remain? It is clear that the purchaser would in such a case have an equitable right to production: "Generally every person who has an interest in land has an equitable right to the production of all deeds which affirmatively prove his title but not to those which do not:" Dart on Vendor and Purchaser, 7th ed., p. 483. And the headnote to *Fain v. Ayers*, 1826, 2 Sim. & St. 533, reads as follows: "If a vendor retains the title deeds and covenants for further assurance only, the purchaser may, under that covenant, compel him to enter into a covenant for production of the deeds."

The point should not be overlooked, however, that provision for indorsements on the probate and letters of administration is only made in respect of assents and conveyances made after 1st January last, whether the testator or intestate died before or after such date: Ad. of E. A., 1925, s. 36 (12).

## Landlord and Tenant Notebook.

THE law relating to licences often raises questions of importance, and as problems arising thereout are sometimes difficult to understand it is proposed to deal briefly with some of the more important matters appertaining to this branch of the law.

A licence is, of course, to be distinguished from a tenancy. Whereas it is essential, to constitute a tenancy, that exclusive possession should be given to the tenant, no such exclusive possession is given to the licensee, and this constitutes the principal distinction between a tenancy on the one hand and a licence on the other. This distinction is of importance, because it may determine, for example, whether the occupation of a servant or a lodger is that of a licensee or that of a tenant. Important consequences moreover flow from the distinction, inasmuch as in the case of a licensee as a general rule there is no right of distress or liability for rates.

Licences may be divided into two categories, viz.: "bare licences," and "licences coupled with a grant." The difference between these two types of licences is best illustrated by a passage in the judgment of VAUGHAN, C.J., in *Thomas v. Sorrell*, 1673, Vaughan 351, where the learned Chief Justice, says: "A dispensation or licence properly passeth no interest, nor alters or transfers property in anything, but only makes an action lawful which without it had been unlawful; as a licence to go beyond the seas, to hunt in a man's park, to come into his home, are only actions, which without licence had been unlawful. But a licence to hunt in a man's park and carry away the deer killed to his own use; to cut down a tree in a man's ground, and to carry it away, the next day after to his own use, are licences as to the acts of hunting and cutting down the tree, but as to the carrying away of the deer killed and tree cut they are grants."

Several important consequences follow from this distinction. A bare licence need not be under seal or in writing and may be made by parol. It will be usually found, however, that a licence coupled with a grant is required to be by deed where the grant in question relates to an interest in land. Reference should be made to the L.P.A., 1925, the material provisions of which are as follows: s. 51 (1) "All lands and interests therein lie in grant . . ."; s. 52 (1) "All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed . . ."; s. 53 (1) "Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—(a) no interest in land can be created or

disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorized in writing . . .": s. 54 (1) "All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorized in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only . . .": s. 55 "Nothing in the last two foregoing sections shall—(d) affect the operation of the law relating to part performance . . ."

It was clearly laid down in *Wood v. Leadbitter*, 1845, 13 M. & W. 838, that a licence coupled with the grant of an interest in land was required by law to be by deed. There the plaintiff had bought for a guinea a ticket which entitled the holder to admission to a stand and inclosure of a race-course during the races, and the court held *inter alia* that the right to come and remain for a certain time on the land of another, could only be granted by deed. In his judgment (*ib.* at pp. 842, 843), ALDERSON, B., said: "That no incorporeal hereditament affecting land can either be created or transferred otherwise than by deed is a proposition so well established, that it would be mere pedantry to cite authorities in its support. All save inheritances are said emphatically to lie in grant and not in livery, and to pass by mere delivery of the deed . . . A right of common, for instance, which is a profit *à prendre*, or a right of way, which is an easement or right in the nature of an easement, can no more be granted or conveyed for life or for years without a deed than in fee simple. Now in the present case the right claimed by the plaintiff is a right during a portion of each day, for a limited number of days, to pass into and through and to remain in a certain close . . . to go and remain where if he went and remained he would, but for the ticket, be a trespasser. This is a right affecting land at least as obviously and extensively as a right of way over the land—it is a right of way and something more; and if we had to decide this case on general principles only and independently of authority, it would appear to us perfectly clear that no such right can be created otherwise than by deed."

One must therefore consider the position where a person has purported to create, say, orally, a licence coupled with a grant, which is required by law to be in writing and by deed. In *Carrington v. Roots*, 2 M. & W. 248, a verbal contract had been entered into for the sale of a growing crop of grass with liberty to the purchaser to enter and cut and carry away the grass, and an action was brought by the purchaser against the seller for wrongfully seizing and impounding a horse and cart belonging to the former, and taken by him on to the close for the purpose of removing the grass. It was held that the action could not be maintained. The effect in law of such an oral agreement was thus explained by Parke, B., in his judgment (*ib.*, at pp. 256, 257): "If it was an agreement for the sale of an interest in land it was not binding by virtue of the fourth section of the Statute of Frauds. I think the right interpretation of that section is this: that an agreement which cannot be enforced on either side is a contract void altogether; no doubt it may have, as an agreement in fact, some operation in communicating a licence; but such licence would be countermandable, and that appears to be the whole effect of the decision in *Crosby v. Wadsworth*, 6 East 611. Here, no doubt, the plaintiff might have pleaded a licence, but the defendant would have replied that it was countermanded, and the plaintiff could not have succeeded on that issue."

(To be continued.)

The attention of the Legal Profession is called to the fact that the PHENIX ASSURANCE COMPANY Ltd., Phoenix House, King William Street, London, E.C.4. (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at 11, Waterloo Place, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2, and throughout the country.

## LAW OF PROPERTY ACTS.

## Points in Practice.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

## LEASEHOLDS—MORTGAGE—SUB-TERM PRESERVED ON PAYMENT OFF—TITLE.

281. Q. In 1907 A purchased from the personal representatives of a mortgagor (who had mortgaged by sub-demise) a leasehold estate in Blackacre under an order of the court, which provided that the sale was to be subject to the incumbrances of those incumbrancers who did not consent to the sale. The assignment to A contained a declaration against merger of the mortgage term for the purpose only of protecting A and subsequent purchasers against possible mesne incumbrances. In 1922 (after divers mesne assignments, etc.) the property became vested in B, who has contracted to sell the same to C. In view of s. 116 and the provisions of paragraph 1 of Pt. II of the 1st Sched. to the L.P.A., 1925, the latter of which refers to "the purposes of a term of years created or limited out of a leasehold interest becoming satisfied," what were the purposes of the derivative term—to secure the mortgage debt by which it was secured, or to protect purchasers? From the wording of s. 116, it would appear that the term becomes satisfied when the mortgage money secured thereby has been paid and discharged. Is it possible for the mortgage term to be kept alive even after 1925 in view of the fact that s. 116 only refers to tenants for life and limited owners of the equity of redemption having the right to keep such term outstanding?

A. It is assumed, although not expressly stated in the question, that all known incumbrancers assented to the sale. This being so, the purpose of the derivative term was surely to protect the purchaser by making him an assign of the mortgagee, the mortgage subsisting as against the unknown mesne incumbrancer, if any, and the purchaser holding, as against him, in the character of first mortgagee, as well as mortgagor. If then there was a mesne incumbrancer, the case fell on 1st January within the L.P.A., 1st Sched., Pt. VIII, para 1, the mesne incumbrancer taking a term a day longer under Pt. VIII, para. 2, and any subsequent mesne incumbrancers terms as therein mentioned. Section 116 does not conflict with this interpretation, for the purchaser would, as against the mesne incumbrancer, have a limited interest, and only a limited interest, in the equity of redemption to the first mortgage, i.e., an interest limited as mortgagor to the surplus value after payment off of the mesne incumbrancer, since there is no reason to cut down the word "limited" in s. 116 to "limited in point of time." See also s. 9 (3) of the Finance Act, 1894 for a similar expression, which would surely protect, e.g., a mortgagee or tenant in common who paid the whole duty. The purchaser can therefore take an assignment of the term and sub-term, with a declaration against merger to operate under s. 185 of the L.P.A., 1925, re-enacting s. 25 (4) of the Judicature Act, 1873, repealed by the 7th Sched. This would protect him against all possible risk, but mesne incumbrancers *sui juris* who did not assert their right in twelve years from 1907 would be barred under the Statutes of Limitations, leaving the outside possibility of a sole or surviving mesne incumbrancer having become a lunatic while time was running.

## UNDIVIDED SHARES—TRUSTEES.

282. Q. A left a will, and appointed his wife B sole executrix, directed his debts to be paid and then gave and bequeathed his freehold property to B for life and "at her decease to be equally divided amongst my children." He died in the year 1895 leaving very little except a cottage in which he lived. His widow paid the debts and occupied the property. At the date of the testator's death there were four children C, D, E and F. The widow died in 1908 without a will. F died in December 1925, leaving a husband and no children, and no will, and letters of administration have not yet been taken out. C, D and E wish to sell, and it is a question who can make a good title. The answer seems to depend on whether *Davis to Evans & Jones*, 1883, 24 Ch. D. 190 applies or not, and whether the realty is converted by A's will.

A. As stated in reply to q. 156, p. 398, *ante*, the question whether a particular will falls within the rule in *Davis to Jones & Evans*, *supra*, (not "*Evans & Jones*") cannot be reliably answered without a view of the whole will. A course can be suggested here, however, which will make the question immaterial. On the one view, if B took the legal estate in the cottage, *quid* trustee, after administration of A's estate, it passed on her death to her legal personal representative, who would hold it as trustee, but if no administrator was appointed, then it would vest in her heir as in *Re Griggs*, 1914, 2 Ch. 547, which appears to resolve doubt as to the abeyance of the freehold as suggested in *Re Pilling*, 1884, 26 C.D. 432. Her heir would be the eldest male of C, D and E or it they were all daughters, the four as co-parceners. In the latter case, on F's death, C, D and E would take her share as co-parceners, and would be trustees for themselves, assuming F never had issue, so that the husband could not take an estate by the curtesy. If the widow did not take the legal estate, C, D and E are similarly entitled. Therefore, (1) If any of the trio, C, D and E, is or are a son or sons, the eldest is trustee for sale (on the supposition that the widow took a legal estate as trustee) under the L.P.A., 1st Sched., Pt. IV, para. 1 (1). (2) On such supposition, if C, D and E are all daughters, they are trustees for sale, and the same result appears on the other supposition. If then the eldest son (if any) appoints the other two trustees for sale with himself, the three will be trustees for sale *quacumque vid.* The question whether there was a trust for sale under A's will does not appear to be very important, for, if there was not, one arose on 1st January, 1926, under the L.P.A., 1925. It is to be noted that, even if there was a bare trust and not a trust for sale under A's will, vesting under the L.P.A., 1925, 1st Sched., Pt. II is excluded by para. 7 (f).

## SETTLED LAND—TRUSTEES—DEVOLUTION.

283. Q. By a marriage settlement made in 1881 real and personal property was vested in trustees in trust for A for life and on her death to her children, and failing children to her brother B absolutely. A died November, 1925, having had no children. On her death the property consisted of the same real and personal estate as settled in 1881. B died in 1914 having by his will appointed his wife and two others his trustees, and gave to his trustees all his real estate and the residue of his personal estate upon trust to pay the net income to his wife for life, and on her death for his son C absolutely, but if the son died in the lifetime of the wife without leaving children he gave his real and personal estate to three others absolutely. The sole surviving trustee X of the marriage settlement of 1881 now desires to be released and to vest the real and personal estate comprised in the settlement in the persons rightly entitled to it. The settlement and will apparently are a compound settlement of which X is the trustee for the purposes of the S.L.A., 1925: see s. 31. Is the widow of B now entitled to a vesting deed to be executed by X as regards the realty? And should the personal estate be transferred to B's trustees upon the trusts of his will, they giving a formal release to X? If X executes a vesting deed

apparently he would have to be declared by such deed as the trustee of the settlement, which he does not wish to be. Would it be simpler for X to appoint the three trustees of B's will as trustees of the marriage settlement (he having power to appoint trustees) and for him immediately after such appointment to retire and be discharged from the trusts of the settlement, thus leaving the vesting deed to be executed by the remaining three trustees? Please advise what is the best course for X to adopt.

A. On A's death X was bare trustee with the duty of conveying the settled property to B's executors or as they should direct, or, assuming B's estate to be fully administered, they would have directed conveyance to his trustees. The marriage settlement was not in fact a settlement of realty within the S.L.A., 1925, on 1st January, 1926, for the land did not stand limited in trust under it within s. 1 (1). The settlement which affects it within the Act is therefore B's will only, and, under the L.P.A., 1925, 1st Sched., paras. 3 and 6 (c), the legal estate shifted to B's widow, but she cannot deal with it until the vesting deed is executed under the S.L.A., 1925, 2nd Sched., para. 1 (2), see s. 13. The trustees of the settlement are B's executors under s. 30 (3) unless he appointed trustees who are not executors and such trustees are within s. 31 (1) (i), (ii), (iii) or (iv) by virtue of the provisions of the will, or unless trustees are appointed under s. 30 (1) (v) by the widow and C. In any case X has no estate and no duties in respect of the realty. The personality vested in him as trustee of the marriage settlement should be assigned by him on the direction of B's executors to his trustees, at the cost of the trust estate.

#### TRUST FOR SALE—SALE BY BENEFICIARIES—CONVEYANCE.

284. Q. A died in 1916 having by his will left all his property (including a house and land) to B and C upon trust to sell and invest and pay income thereof to B for life, and afterwards for X absolutely. B (trustee and tenant for life) has died. Contract for sale of house entered into by B and X prior to 1926. No conveyance executed. Would C as surviving personal representative still have power to give an assent under A.E.A., 1925, s. 36, so as to operate to vest the property in X and enable her to convey the fee simple? If not what would be the best and least expensive method of conveying the property to the purchaser?

A. The purchaser of the house will, of course, require a conveyance, for by the L.P.A., 1925, 1st Sched., Pt. II., para. 7 (j), he is excluded from the automatic vesting provisions of that section. C holds on trust for sale, but he cannot exercise any discretion as to price, conditions, etc., as the case is really one falling within s. 23 of the L.P.A., 1925. The title should therefore be recited in the conveyance and C will convey by the direction of X to the purchaser, X conveying and confirming and receiving the purchase money. In respect of apportionment of rents accrued, however, perhaps the purchaser would do best to procure the concurrence of B's executors.

#### LAND SUBJECT TO UNREGISTERED LIFE ANNUITY—SALE OF.

285. Q. In 1903 A takes a conveyance of houses from B, subject to the payment of a life annuity to B. Such annuity was never registered. A dies in 1922, having devised his real estate to his executors B, C and D upon trust for sale. Under such trust for sale can B, C and D convey the houses upon which the annuity is charged and overreach B's equitable interest, or must trustees approved by the court or a trust corporation be appointed under L.P.A., 1925, s. 2 (2)?

A. The purchaser from A's executors will take the property free from the annuity, see s. 5 of the L.C.A., 1925, which no doubt will be B's intention. Assuming A was under covenant to pay the annuity, B will arrange that it shall be secured on the proceeds of sale in accordance with the L.P.A., 1925, s. 3 (1) (b) (i).

#### UNDIVIDED SHARES—LEASEHOLDS—SALE BY UNDERLEASE—RENT OR PREMIUM.

286. Q. A in 1915 purchased six houses held for the residue of a term of 999 years at a rent of £8 10s. A died in 1918

intestate, leaving his widow entitled to dower (but not marked out by metes and bounds) and four children all *sui juris*. The widow took out letters of administration, and assigned as such administratrix four of the houses at equitably apportioned rents of £2 each house. It is now desired to sell by way of underlease another house for a sum in gross and a new rent of £2. It would appear that by the operation of s. 39, Ad. of E. A., 1925, s. 28 of L.P.A., 1925, and the S.L.A., 1925, a personal representative can sell in consideration of a perpetual rent and grant a building lease for 999 years, but can not underlease at an improved rent where the underlease is not for the purpose of building. If the administratrix in the above-mentioned case assents to the children and releases her dower rights, the children would then become trustees for sale and could not, it seems, make title in the way desired. Can any method be suggested to overcome the difficulty?

A. Since the property mentioned was a long leasehold and therefore personality, it was not the subject of dower at all, but the widow took one-third under s. 3 of the Statute of Distribution, 1670. The questioner does not make it clear whether the assignment of four of the houses mentioned was to her children in satisfaction or part satisfaction of their shares on intestacy, in accordance with s. 4 (1) of the Land Transfer Act, 1897, or to a purchaser. The practical importance would hinge on the question whether the children's shares were satisfied by such appropriation. If so, the other houses belong to the widow, and she can deal with them as she likes. If not, she and her children were entitled in undivided shares on 1st January, 1926, and the property has vested in the Public Trustee under the L.P.A., 1st Sched., Pt. IV, para 1 (4), liable to be divested under para. 1 (4) (iii) if all the children, or the widow and any two of them, appoint new trustees (themselves if they wish) under s. 36 (1) of the T.A., 1925. The proposed sale would appear to be within *Re Judd & Poland's Contract*, 1906, 1 Ch. 684, which is not overruled by the new legislation, but if there was any doubt all parties interested could direct conveyance under s. 23 of the L.P.A., 1925.

#### BRINE PUMPING—COMPENSATION—LAND CHARGE.

287. Q. In the district of Northwich there is a certain compensation fund regulated by the Brine Pumping Compensation Subsidence Acts 1891 to 1896 to which brine pumpers have to subscribe and against which property owners may make claims for damage caused by subsidence. Under the Acts the Board are allowed if they can to come to terms with an owner of property to pay him a lump sum, and thereafter the owner of the property in question is barred from making any claims against the Board: it does not appear from the Land Charges Act that such a release need be registered, but we shall be glad to have your views on the question, as it, of course, makes a great difference whether a claim can or cannot be made against the Board in respect of any property?

A. The Act of 1891 appears to be the only public Act regulating the compensation, and a release and receipt in respect of a claim settled and paid for once and for all, would no doubt show on the face of it that no further compensation was in any circumstances payable to the claimant or his successors in title for subsidence of the land in respect of which compensation was awarded. Receipt of this compensation would also under s. 50 debar claims for compensation from other persons. No question under the L.C.A., 1925, however, appears to arise, for an unascertained right for compensation for subsidence is not a charge under the Act, though it might conceivably give rise to a *lis pendens* registrable against the owner of the subjacent soil. When the full compensation has been paid, not only is there no land charge, but the release and receipt form a complete answer to any claim in respect of the subsidence.

## Law Courts at Work.

### JUDGE ON THE DUTY OF THE PUBLIC.

ALL THE Judges in the Probate, Divorce, and Admiralty Divisions took their seats at the appointed time on Tuesday morning. Several King's Bench Judges were able to proceed with the trial of actions, but others had to delay proceedings because of late arrivals. Mr. Justice HORRIDGE, in releasing a waiting jury, asked them to be in attendance at a quarter-past ten on Wednesday morning. "It is a public duty," he said, "and we must do the best we can."

When Mr. Justice LAWRENCE arrived late he said he had been two hours and a half coming. Mr. Justice HILL stated that it had taken him two hours to travel from Wimbledon.

Mr. Justice ASTBURY said he did not propose to take any action in which the witnesses lived at any substantial distance. It would be a gross injustice to do so.

The spacious yard on the western side of the Law Courts resembled a huge garage, being packed with motors and motor-cycles.

## Books Received.

*Cases on The Law of the Constitution.* BEROE A. BICKNELL, Middle Temple. Oxford University Press: Humphrey Milford, Amen House, Warwick Square, E.C.4.

*Principles and Practice of the Criminal Law.* SEYMOUR F. HARRIS, B.C.L., M.A. (Oxon). Fourteenth Edition by A. M. WILSHIRE, M.A., LL.B. 607 pp. (with Index). Sweet & Maxwell, Ltd., 2/3, Chancery-lane. 1926.

*An Introduction to the Study of the American Constitution.* A Study of the Formation and Development of the American Constitutional System, and of the Ideals upon which it is based, with illustrative materials. CHARLES E. MARTIN, Ph.D. Oxford University Press: New York, Toronto, Melbourne and Bombay. Humphrey Milford, Amen House, Warwick-square, E.C.4.

*The Municipal Year Book* (1926) with an Introduction by The Right Hon. NEVILLE CHAMBERLAIN, M.P., Minister of Health. The Municipal Journal Ltd., Sardinia House, Sardinia-street, W.C.2. 15s. net.

*The Empire Review*, No. 304, May, 1926. MacMillan & Co. Ltd., London, Bombay and New York. 2s. net.

*Transactions of the Grotius Society* (Founded 1915). Vol. 11, Problems of Peace and War—papers read before the Society in 1925. Sweet & Maxwell, Ltd., 2/3 Chancery-lane. 8vo. 138 pp. To non-members, 7s. 6d. net.

*Report of the Crimes Sub-Committee.* 476 pp. 1926. The Law Association, Philadelphia.

*The Enfranchisement of Copyholds and the Extinguishment of Manorial Incidents (under the Property Acts, 1922 and 1924).* G. E. HART, Solicitor. Butterworth & Co., Temple Bar. 340 pp. (with Index). 21s. net.

*A History of English Law* by Professor W. S. HOLDSWORTH, K.C., D.C.L. Vol. IX. 457 pp. (with Index). Methuen and Co. Ltd., Essex-street, W.C.2. 25s. net.

*The Complete Newgate Calendar*, being Captain Charles Johnson's General History of the Lives and Adventures of the most famous Highwaymen, Murderers, and Street Robbers and Account of the Ravages and Plunders of the most notorious Pirates, 1734; Captain Alexander Smith's complete History of the Lives and Robberies of the most notorious Highwaymen, Footpads, Shop-lifts and Cheats 1719; The Tyburn Chronicle, 1768; The Malefactor's Register, 1796; George Borrow's Celebrated Trials, 1825; The Newgate Calendar by Andrew Knapp and William Baldwin, 1826; Camden Pelham's Chronicles of Crime, 1841, etc. J. L. Rayner and G. T. Crook. 8vo. Five Volumes. 1926. The Navarre Society, Ltd., 23 New Oxford-street, W.C.1. £3 7s. 6d. net.

## Correspondence.

### Points in Practice.

Sir,—I wish to call attention to what appears to me to be an inaccuracy in several answers to questions on "Points in Practice," e.g., Nos. 177 and 234. It is said that in an appointment to displace the Public Trustee (L.P.A., 1925, 1st Sched., Pt. IV, 1 (4)), the appointors may appoint themselves under s. 36 (1) of the Trustee Act 1925; but the Public Trustee is not dead and does not come within any other case there mentioned. The point is met in the S.L.A., 1925, 2nd Sched., para. 3 (1) (iv), by the words "in like manner as if the Public Trustee had refused to act in the trust." There being no such words in the enactment first quoted the appointment by the appointors of themselves must, it would seem, be justified by the decision in *Montefiore v. Guedalla*, 1903, 2 Ch. 723, which may be said to derive a quasi confirmation from the section cited of the Trustee Act, 1925.

G. P. PAICE.

7, Stone-buildings,  
Lincoln's Inn.  
30th April.

[Our correspondent is thanked for the opportunity given to explain a matter carefully thought out before these answers were given. Starting from the fact that "instrument" in the T.A., 1925, includes Act of Parliament (s. 68 (5)), the instrument creating the trust for sale of undivided shares is the L.P.A., 1925. That Act appoints the Public Trustee as trustee in certain circumstances, but gives certain persons interested power to remove him and appoint others. This being so, how may they do so? The answer is supplied in s. 36 (2) of the T.A., 1925, in the case of a corporation (as the Public Trustee is, see s. 1 (2) of the Public Trustee Act, 1906), namely "as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly." That imports s. 36 (1), and the answers, the accuracy of which are questioned are based on the above reasoning. It may be allowed that a technical difficulty might be raised on the words "when a trustee has been removed" in s. 36 (2) for it may be argued that the trustee is not in fact removed until the appointment is made. But if the appointment is made "in the place of the Public Trustee" (L.P.A., 1st Sched., Pt. IV, para. 1 (4) (iii)) it cannot be made until he is displaced. Therefore it is submitted, *pace* the questioner, that s. 36 of the T.A., 1925, applies to such appointments, as clearly it is meant to do, instead of leaving a solitary instance of the appointment of new trustees to which it does not apply.—ED., *Sol. J.*]

### The Taxation of Fugitive Millionaires.

Sir,—The writer of the article on the taxation of fugitive millionaires which appeared in your issue of 1st May seems to me to have allowed his natural indignation to overpower to some extent his sense of proportion; we all abhor the millionaire tax dodger, however much we may in our own small way defraud the tax collector when opportunity offers, but the remedies suggested will, in my opinion, if carried to their logical and effective conclusion, be worse than the disease. The taxation of the Channel Islands has always been a matter of difficulty owing to the peculiar circumstances of their constitution, but I do not think it is impossible to close down both these and the Isle of Man as a haven for tax-dodgers. Thus far I am in agreement with the writer of the article, and I think such action would go a long way towards remedying the evil.

If, however, a rich man is really prepared to take himself and his money out of the jurisdiction it will be very difficult to stop him. At present a British subject domiciled abroad is liable, with certain exceptions, to income and super-tax on all

income arising in this country; death duties are regulated by domicile.

It is now suggested that all nationals shall be taxed regardless of domicile:—

- (a) For three years after leaving this country;
- (b) For their lives.

An exception is made for the case of those who *bona fide* renounce English nationality for foreign or Dominion status with the King's consent. But the rich tax-dodger who is about to live abroad will probably be ready to do this, and if the consent is given as a matter of course it will merely become another passport nuisance and no real safeguard at all; if, on the other hand, it is strictly limited, it will hamper emigration, particularly the emigration of young people of some means, which is eminently desirable from the Imperial point of view.

So much for the law-abiding citizen. Now, how is the tax-dodger who merely goes without leave to be dealt with. It is suggested firstly that any property left in this country shall be seized; the answer is that in that case he will not leave any, or at any rate, not much. Nor will he lose much by a forced sale, because he will take his time over it. It should be remembered that his main object is less to avoid immediate income tax as the crippling death duties, and he is not going to die to-morrow. It should further be remembered that there are many rich Englishmen whose wealth comes from colonial or foreign countries, and has never been in this country in a capital form. Secondly, that an agreement be made with the country of his adoption for the collection of taxes from him. Such an agreement already exists between this country and France, with the result that Englishmen who visit France and die there are liable to have their estates mulcted of double duty, unless they are very careful. But most countries will not be anxious to drive the fugitive millionaire from their shores; rather will they receive him and his money with open arms and proceed to tax him themselves. They will require a considerable *quid pro quo*, and since, by the writer's own admission, to be effective such agreements must be made with every civilized country in the world, the cost would be prohibitive. Thirdly, assessments are to be made for three to five years ahead. This, in itself, is a difficult matter involving increased administrative costs and security to be given for the payment of the tax due thereon by any person desiring to leave the country. This would be an intolerable interference with all persons who wished to go abroad for business or pleasure, presumably, even to Boulogne, for the day. The writer suggests that honest people who intended to return and pay their taxes would not be inconvenienced. I respectfully beg to differ. To be effective the security given would have to be very considerable, and would involve tying up an inconveniently large amount of capital which is probably required for the owner's business.

One remedy is to prohibit the export of capital, but that is to proceed against the property rather than the person. But this is not compatible with the financial policy of this country as a great world-trading centre.

The truth is that there is no one practical remedy against the rich man who is really prepared to give up his country to avoid taxation. These, fortunately, are very few in number, and it would not be worth the administrative expense and general interference with business, to say nothing of the cost of the concessions other countries would require in return for their assistance in the matter.

London.

F.

#### CENTRAL CRIMINAL COURT.

##### NO MURDER CHARGES.

Addressing the Grand Jury at the Old Bailey recently, the Recorder (Sir Ernest Wild, K.C.) mentioned that for the third consecutive session there were no charges of murder for trial. With such a jurisdiction as the court covered, this, he said, was indeed a happy feature.

## High Court—Chancery Division.

### *In re Drake's Settlement.*

Romer, J. 16th April.

TRUSTEE — SETTLEMENT — RETIRING TRUSTEE — PUBLIC TRUSTEE — APPOINTMENT OF — PROHIBITION ORDER SOUGHT—PUBLIC TRUSTEE ACT, 1906, 6 Edw. 7, c. 55, s. 5, s-s. (4).

*An injunction restraining trustees from appointing the Public Trustee in their place will not be granted unless the court decides that it is expedient in the interests of all the beneficiaries that the trustees should be restrained from appointing the Public Trustee.*

*In re Hope Johnstone's Settlement Trusts, 1909, 25 T.L.R. 369, commented upon.*

Adjourned summons. This was an application by a tenant for life under a settlement to the court under s. 5, s-s. (4), of the Public Trustee Act, 1906, for an injunction restraining the trustees of the settlement, which was a settlement of heirlooms, from appointing the Public Trustee to be a trustee in their place, the trustees having expressed the desire to retire and to appoint the Public Trustee in their place. When the application was originally made it was thought that the Public Trustee's fees would be out of proportion to the light duties of the trustees, but it had since been ascertained that the Public Trustee's fee would be quite small in this case, so that ground of objection had been abandoned. However, counsel for the tenant for life relied on *In re Hope Johnstone's Settlement Trusts, supra*, which contained as a part of the head-note these words: "Per Parker, J.: Although trustees who are desirous of retiring can appoint the Public Trustee they ought only to resort to the powers of the Public Trustee Act, 1906, if there is no other way out of the difficulty that may have arisen. Reference was also made to *In re Firth, 1912, 1 Ch. 806*, in which the above case was referred to."

ROMER, J., after stating the facts, said: The section provides that in dealing with an application of this nature "the Court may, if having regard to the interests of all the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made." It does not appear to be expedient in the interests of all the beneficiaries to restrain the trustees from appointing the Public Trustee. The application therefore fails. When the facts and the judgment in *In re Hope Johnstone's Settlement Trusts, supra*, are looked into, it appears reasonably clear that the observation of Parker, J., set out in the head-note was intended by him to be applied to a settlement of the kind with which he was dealing in that particular case, and was not intended to be of general application.

COUNSEL: Israel; J. N. Gray.

SOLICITORS: Oliver, Richards & Parker; Dawes & Sons.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

## High Court—King's Bench Division

Campbell v. Lill. 16th March.

Bankes and Warrington, L.JJ., sitting as additional Judges of the King's Bench Division.

LANDLORD AND TENANT—RENT RESTRICTION—DWELLING-HOUSE—NOTICE TO QUIT—TENANT HOLDING OVER AS STATUTORY TENANT—TENANT SUB-LETTING PART AND STAYING IN POSSESSION OF REMAINDER—RIGHT OF LANDLORD TO CLAIM POSSESSION OF WHOLE PREMISES—RENT RESTRICTIONS ACT, 1923; 13 & 14 Geo. V, c. 32, s. 4.

*Section 4 of the Rent Restrictions Act, 1923, enacts: The following section shall be substituted for s. 5 of the principal Act, namely:—"5 (1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—(inter alia) (h) the tenant without the consent of the*



## LIST OF CONVEYANCING and AGREEMENT FORMS

which have been Settled by

Sir BENJAMIN LENNARD CHERRY, LL.B.,

for

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STATIONERY SOCIETY, LIMITED,

and are NOW ON SALE.

	s.	d.		s.	d.
1a. Deed of Dissolution of Partnership (Draft) each	2	6	32a. Charge by way of Legal Mortgage of Freehold (Draft) each	1	6
2. Assignment for Benefit of Creditors ... { each	1	0	32b. Charge by way of Legal Mortgage of Freehold (Subject to a prior Mortgage) (Draft) each	2	6
2a. Assignment for Benefit of Creditors to a Trustee with Committee of Inspection { doz.	11	0	32m. Charge by way of Legal Mortgage of Freehold (Subject to a perpetual Chief Rent) (Draft) each	2	6
2b. Assignment for Benefit of Creditors by more than one Debtor { each	2	6	33. Mortgage of Leasehold (Engrossment) each	2	6
3. Assignment of Lease (Draft) ... doz.	20	0	34. Mortgage to a Building Society Freehold (Draft) each	5	0
4.* Assignment of Leaseholds by Mortgagor and Mortgagee. each	2	0	34b. Surrender of Part (Freehold) comprised in a Mortgage (Draft) each	1	0
7. Bill of Sale (Conditional) ... each	0	6	34*. Mortgage to a Building Society Leasehold (Draft) each	5	0
9. Transfer of Bill of Sale ... each	0	6	34a. Further Charge (Draft) ... each	1	0
12. Deed of Inspectorship for the Benefit of Creditors ... { each	2	6	36. Power of Attorney (General Form) ... each	0	6
13. Composition Deed ... doz.	20	0	36*. Power of Attorney (For some special Purpose) each	0	6
15. Conveyance of Freehold ... each	0	6	38. Marriage Settlement (Draft) ... each	5	0
15a. Conveyance of Freehold Property subject to a Lease (Draft) each	1	0	39. Appointment of New Trustees (Draft) each	2	6
15b. Conveyance on Sale by Mortgagor and Mortgagee each	2	0	43b. Assignment of Goodwill of a Business each	1	0
15c. Conveyance of Right of Redemption (Freehold) (Draft) each	2	0	45. Advertisement for Claimants (Deceased Person) (Statutory) quire	2	6
15e.* Conveyance of Right of Redemption Mortgagee joining and releasing Vendor. (Freehold) (Draft) each	2	6	46. Account on Completion of Purchase of Premises (Foolscap form) doz.	1	0
15d. Assignment of Right of Redemption (Leasehold) (Draft) each	2	6	46b. Notice by Vendor to Tenant of Sale doz.	2	0
17. Vesting Deed for giving effect to a Settlement subsisting on 1st January 1926 (Draft) each	2	6	46c. Notice by Vendor's Solicitor to Tenant of Sale doz.	2	0
22c. Particulars for obtaining Grant of Probate or Administration each	0	6	46d. Reminders on Completion for Vendors doz.	1	0
23. Lease (Lessee Repairs) (Draft) ... each	1	0	46e. Reminders on Completion for Purchasers doz.	1	0
23b. „ (Lessor Repairs, outside of premises) (Draft) each	1	0			
24. Lease, short form of ... each	0	6			
26. Agricultural Lease (Act 1923) (Draft) each	1	6			
27. Requisitions on Title (Freehold) } each	0	6			
28. „ „ (Leasehold) } doz.	5	0			
30. Receipt for Scheduled Documents ... doz.	3	0			
31. Memorandum of Deposit of Documents to secure an advance each	1	0			
32. Charge by way of Legal Mortgage of Freehold (Joint Tenants) (Engrossment) each	2	6			
32a. Charge by way of Legal Mortgage of Freehold (Engrossment) each	1	6			

### AGREEMENT FORMS.

1. Agreement for Letting (Short Form) ...	each	0	3
2a. Agreement for Letting House (Stringent Form)	each	0	6
3b. Agreement for Letting Flat ...	each	0	6
7. Agreement for Sale of Leaseholds ...	each	0	6
8. Agreement for Sale of Freeholds ...	each	0	6
12. Agreement for Building and Granting Lease	each	1	0
13. Agreement for Hire of Chattels with Option to Purchase	each	1	0
14. Agreement for Letting Farm yearly under Act 1923	each	1	0
15. Agreement for Building Contract and General Conditions	each	1	0

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**N.B.—New Forms as they are ready will be added to the above List.**

landlord has at any time after the thirty-first day of July, 1923, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let."

A statutory tenant who was in possession of the whole of a dwelling-house, which came within the protection of the Rent Restriction Act, 1923, sub-let a part of the house, and stayed in possession of the remainder of the premises himself. The landlord thereupon brought an action for possession, and the county court judge made an order in his favour.

Held, on appeal, that the landlord was not entitled to possession against the tenant inasmuch as he had remained in possession of part of the premises.

Keeves v. Dean, 1924, 1 K.B. 685, distinguished.

Appeal by the defendant (the tenant) from the Wandsworth County Court. The landlord brought an action to recover the possession of premises at Hill-rise, Richmond, which came within the protection of the Rent Restrictions Act, and which the landlord had let to the defendant in 1915 on a three years' agreement, which terminated in 1918. The defendant had remained in possession after the expiration of the original tenancy. In June, 1920, a notice to quit was served on the defendant, which expired at Christmas, 1920. It was agreed between the parties that from Christmas, 1920, the defendant remained in occupation against the will of the landlord and as a statutory tenant. After the notice to quit had been served, and while he was a statutory tenant, the defendant sub-let a portion of the premises to a sub-tenant and remained in possession of the rest of the premises himself. The landlord thereupon brought an action to recover possession of the whole of the premises. The county court judge held that the defendant had lost the protection of the Rent Restrictions Act, by reason of the facts set out above, and he made an order for possession. The defendant now appealed.

BANKES, L.J., said that the defendant's answer to the action was that the landlord could only obtain a judgment or order for possession against him on one or more of the grounds contained in the Rent Restrictions Act, 1923, which justified an order for possession being made. The landlord relied on *Keeves v. Dean*, 1924, 1 K.B. 685, which had, in fact, no real application to the present case. The Court was not considering what would be the position of the defendant if the landlord had brought the action against the sub-tenant. The defendant had remained in possession of part of the premises and he was within the protection of the Act. The judgment of the county court judge would be set aside and the appeal would be allowed, with costs.

WARRINGTON, L.J., concurred.

COUNSEL: For the appellant, *Bernard Campion*, K.C., and *S. P. Kerr*; for the respondent, *Sir Henry Maddocks*, K.C., and *Charles Bray*.

SOLICITORS: For the appellant, *Aplin, Nicholas, Son and Coutts*; for the respondent, *Calvert H. E. Smith*.

[Reported by COLIN CLAYTON, Esq., Barrister-at-Law.]

## Societies.

### Law Association.

The usual monthly meeting of the Directors was held at The Law Society's Hall, on Thursday, the 29th ult., Mr. J. E. W. Rider in the chair. The other directors present were Mr. J. D. Arthur, Mr. E. B. V. Christian, Mr. F. W. Emery, Mr. C. Eric Few, Mr. P. E. Marshall, Mr. J. R. H. Molony, Mr. A. E. Pridham, Mr. John Venning, Mr. Wm. Winterbotham, Mr. W. M. Woodhouse, and the secretary, Mr. E. E. Barron. A sum of £135 was voted in relief of deserving applicants, two new members were elected, and the Annual General Court was fixed to be held at The Law Society's Hall on Monday, the 31st May, at 2 o'clock, when Lord Blanesburgh had promised to attend and take the chair, and it was resolved to invite all members of The Law Society to be present, whether members of the Law Association or not.

## COURT BONDS.

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### Legacy for Gray's Inn.

£100,000 FOR SCHOLARSHIPS.

A legacy which, it is estimated, will be worth at least £100,000, will come to Gray's Inn as a result of the death recently of Mr. Henry Beaufort Inglefield, of 27, Cadogan-square. This, under a provision already made, will be devoted to the creation of a trust to found scholarships and to promote other educational purposes.

The estate is really that of the late Lady Holker, widow of Sir John Holker, an Attorney-General and then Lord Justice of Appeal, who died in 1882, and who was a student and a bencher of Gray's Inn. He made a large fortune at the Bar, and on his death left all his estate to his widow. Lady Holker subsequently married Mr. Inglefield, and made a will by which her husband on her death retained a life interest only in her estate, which, on his death, was to pass to Gray's Inn. Originally the estate was to be left in trust to the Lord Chief Justice, the Attorney-General for the time being, and the Treasurer of Gray's Inn, but a few years ago it was considered a better plan to re-convey the trust to the trustees of Gray's Inn, who are Judge Mulligan, K.C., Sir Miles Martinson, K.C., and Sir Lewis Coward, K.C. It has, of course, been known for years that ultimately this legacy would enlarge the already not unimportant endowments for educational purposes which this Inn possesses, but no plans have yet been made for using this fund. Mr. Inglefield had no connexion with the law, and was the elder son of the late Admiral Sir Edward Augustus Inglefield.

### Institute of Public Administration.

UNIVERSITIES AND A DIPLOMA EXAMINATION.

Sir William Hart, Town Clerk of Sheffield, presided on Thursday in last week over the fourth annual general meeting of the Institute of Public Administration, held at the Ministry of Health.

The CHAIRMAN presented the Haldane Medal to Mr. H. H. Ellis, who was the winner of the Haldane Essay Competition for 1925.

Professor GRAHAM WALLAS said many questions had been raised with regard to the diploma of the institute. One point was whether the institute should have its own examination or whether it should seek the co-operation of the Universities of England to provide the diploma. No decision had yet been taken by the council, but there was an overwhelming opinion that if the diploma was to carry the necessary weight it was desirable that it should carry the seal of some university, and that the actual work of preparing for the diploma should have the assistance of some university.

Sir HENRY BUNBURY, in moving the adoption of the accounts of the institute and the auditors' report, stated that the institute had now secured headquarters where there would be a library for members' use.

The accounts were adopted, and Sir Henry was re-elected hon. treasurer.

Mr. H. G. CORNER, the hon. secretary, in responding to a vote of thanks, appealed for an increased membership of the institute. At present they had about 2,000 members, and he asked those present to assist in increasing that membership to 4,000 during the coming year.

## Legal News.

### Appointments.

CLIFFORD GOVER CONOLLY, M.A., LL.B. (Messrs. White and Leonard), Bank-buildings, Ludgate-circus, E.C.4, has been appointed a Commissioner for Affidavits of the High Court of Australia and the Supreme Courts of Victoria, New South Wales, New Zealand, and British Columbia.

### Announcement.

Mr. HAROLD BEVIR (Ernest Bevir & Son), of 4, York-buildings, Adelphi, London, and Hendon and Mill Hill, has (as from the 1st January, 1926) taken into partnership Mr. S. B. DONALD, who has previously practised under his own name at Ely Place, London, and Saffron Walden. Mr. Donald will be in charge of the Hendon and Mill Hill offices. The name of the firm will remain unchanged.

### Wills and Bequests.

Mr. Walter Herries Pollock, of Chawton Lodge, Alton, Hants, barrister-at-law, for many years editor of the "Saturday Review," author of numerous books and of several plays, who died on 21st February, aged seventy-six, left estate in his own disposition of the gross value of £2,262, with net personalty £1,690.

Mr. Charles Scott-Chad, M.A., J.P., of Pynkney Hall, King's Lynn, and of Palace Gardens-terrace, Kensington, W., barrister-at-law, who died on 25th February, aged sixty-eight, left estate of the gross value of £142,447, with net personalty £105,525.

### THE REGISTRATION OF NURSING HOMES.

#### FURTHER EVIDENCE IN COMMITTEE.

Further evidence was heard on Thursday evening, the 29th ult., at the House of Commons by the committee (under Sir Cyril Cobb) appointed to inquire into the desirability of registering nursing homes as proposed in the Bill now before the House.

Miss Macdonald, secretary of the Royal British Nurses' Association, gave evidence in favour of the registration and inspection of all nursing homes, and said the work should be under the Ministry of Health. She did not favour county councils being empowered to carry out the work, but would prefer that they should do so if the Ministry of Health, for financial or other reasons, could not undertake it. It would need a large special staff, but she had not considered this part of the question. The protection and welfare of the patients must be the first consideration in all cases. She did not think it would need a "vast army" of inspectors to cover the work. There should be one standard of nursing homes to which all should conform, whether provided for rich or poor. She thought there was a high standard of competence already in nursing homes, and that any prevailing evils would be remedied by registration and inspection. It might be possible to put secondary or partially-trained nurses in homes for those who were merely "old and infirm," or for patients who perhaps could not afford the fees for fully-trained nurses. There might be classes "A" and "B" to cover that point.

Evidence was also given by two witnesses as to alleged faulty treatment of maternity cases in nursing homes.

### LEGAL AGE OF MARRIAGE.

Sir W. Joynson-Hicks, Home Secretary (Twickenham), replying to Mr. Pethick-Lawrence (Leicester, W., Lab.), who asked whether he proposed to introduce legislation to raise the legal age of marriage, said: This is a very difficult question. It is still under consideration and I am not as yet in a position to make a statement.

Mr. Pethick-Lawrence asked when he should put down another question on the subject?

Sir W. Joynson-Hicks: I am very anxious to be able to make some statement to the House on the point, but the more I dive into the ancient marriage laws the more difficult it appears, and I am not at all sure that it will not turn out that the legal age for marriage is two. (Laughter.)

Mr. D. Grenfell (Gower, Lab.): Is not this a proper question for the committee on juvenile delinquents? (Laughter.)

### A JUDGE AND "DEMORALIZED" TENANTS.

When Mr. Justice Rowlatt recently gave judgment against a tenant in an action by the landlord for possession (the facts of which were of no public interest), counsel for the tenant asked for time in which to find other premises.

His Lordship: I will give you a few days, for you had quite a reasonable and arguable point; if I had thought that it was a bogus defence I would have given no time at all, for people are getting perfectly demoralized in the way they refuse to go out of other people's property. I think you should have ten days.

Counsel: Will not your lordship make it fourteen?

Mr. Justice Rowlatt: No; I have no right to give away other people's rights. I could easily say "Take three months," and go away quite happily in the thought that I had saved these poor people from turning out; but I should be doing it at the plaintiff's expense. There will be judgment for possession, and a stay of execution for ten days.

## Court Papers.

### Supreme Court of Judicature.

Date.	EMERGENCY ROTA.	ROTA OF REGISTRARS IN ATTENDANCE ON APPEAL COURT		MR. JUSTICE EVE.	MR. JUSTICE BLOXAM.
		No. 1.	No. 2.		
Monday May 10	Mr. Ritchie	Mr. More	Mr. Hicks Beach	Mr. Bloxam	Mr. Bloxam
Tuesday .. 11	Syngé	Jolly	Hicks Beach	Hicks Beach	Hicks Beach
Wednesday 12	Hicks Beach	Ritchie	Bloxam	Bloxam	Bloxam
Thursday .. 13	Bloxam	Syngé	Hicks Beach	Hicks Beach	Hicks Beach
Friday .... 14	More	Hicks Beach	Bloxam	Bloxam	Bloxam
Saturday .. 15	Jolly	Bloxam	Bloxam	Bloxam	Hicks Beach
Date.	MR. JUSTICE ASTBURY.	MR. JUSTICE LAWRENCE.		MR. JUSTICE RUSSELL.	MR. JUSTICE TOMLIN.
		No. 1.	No. 2.		
Monday May 10	Mr. Syngé	Mr. Ritchie	Mr. More	Mr. Jolly	Mr. Jolly
Tuesday .. 11	Ritchie	Syngé	More	More	More
Wednesday 12	Syngé	Ritchie	Jolly	Jolly	Jolly
Thursday .. 13	Ritchie	Syngé	More	More	More
Friday .... 14	Syngé	Ritchie	More	More	More
Saturday .. 15	Ritchie	Syngé	Jolly	Jolly	More

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